

AMENDMENTIn the Claims:

Please cancel Claims 10, 27, 105, and 110-112, without prejudice. Because the present Amendment merely involves the cancellation of claims, a Version with Markings to Show Changes Made is not included after Applicant's Remarks, which follow.

REMARKSPending Claims

Prior to the above amendments, Claims 1-34 and 97-112 are pending. Claims 1-34 and 110-111 are directed to a method of delivering a medicant to an abnormal brain region in a mammalian subject. Claims 97-107 and 112 relate to a pharmaceutical composition. Claims 108-109 are directed to a kit for enhancing the delivery of a medicant to an abnormal brain region and/or to a malignant tumor.

The Supplemental Office Action and Applicant's Response

The Examiner stated that the Supplemental Office Action replaces the Office Action mailed July 5, 2001, and that the time for a response will restart as of the mailing date of the Supplemental Office Action.

The Examiner acknowledged the telephonic interview held on March 14, 2001, and the filing of Applicant's Response to Office Action (issued December 20, 2000), which Applicant mailed March 20, 2000. The Examiner stated that new Claims 110-112 were added and that Claims 1, 6, 18, and 23 have been amended, however, in Applicant's Response to Office Action, mailed March 20, 2001, Applicant actually amended Claims 97, 101, and 108, as well as Claims 1, 6, 18, and 23. Applicant inadvertently failed to mention a

specific request to amend Claims 97, 101, and 108 along with Claims 1, 6, 18, and 23, in the first sentence on page 2 of the Response mailed March 20, 2001, but amendments to Claims 97, 101, and 108 were nevertheless presented for the Examiner's consideration. In a Response to Notice of Non-Compliant Amendment, which Applicant mailed April 20, 2001, the oversight was corrected, and a specific request was made to amend all of Claims 1, 6, 18, 23, 97, 101, and 108. While the Examiner's statement (Supplemental Office Action, at page 3, item 5) that Claim 101 "... do[es] not recite viral vectors" implies that Applicant's amendment of Claim 101 was indeed entered (since Applicant's amendment *inter alia* deleted "viral vector"), Applicant would greatly appreciate and hereby requests the Examiner's express acknowledgment that the amendments to Claims 97, 101, and 108 were entered.

In the Supplemental Office Action, the Examiner did not mention Applicant's Response to Notice of Non-Compliant Amendment and a Statement of the Substance of the Interview, which Applicant mailed April 20, 2001. While Applicant has received a confirmatory postcard that these two documents were received in the USPTO, Applicant would appreciate and hereby requests the Examiner's express acknowledgment that they have been entered into the prosecution file.

The Examiner stated that Claims 97-104 and 106-109 are allowed.

The Examiner objected to Claims 2-9, 11-17, 19-26, and 28-34 as depending from rejected base claims, and she stated that they would be allowable if rewritten to overcome the rejections under 35 U.S.C. § 112 set forth in the Supplemental Office Action and to include all the limitations of the base claims and any intervening claims.

Merely to expedite the issuance of the above-captioned application as a patent, Applicant has cancelled Claims 10, 27, 105, and 110-112, without prejudice. Applicant reserves the right to file and further prosecute a continuation application directed to the subject matter of those claims.

The Examiner rejected Claims 1, 10, 18, 27, and 105 under 35 U.S.C. § 112, second paragraph.

In particular, the Examiner rejected Claims 1 and 18, because they recite the phrase "simultaneously or substantially simultaneously" and that the term "substantially" is allegedly unclear. Consequently, the Examiner also objected to Claims 2-9 and 11-17, dependent directly or indirectly from Claim 1, and to Claims 19-26 and 28-34, dependent directly or indirectly from Claim 18.

In response, Applicant notes that Applicant is permitted to be its own lexicographer and would like to bring the Examiner's attention to the detailed special definition of "simultaneously or substantially simultaneously" included in the specification as originally filed, at page 12, lines 20-29. For example, the specification teaches that "simultaneously" means that the medicant is administered contemporaneously or concurrently with the potassium channel agonist (page 12, lines 23-24). Further, the specification particularly states that "... '[s]ubstantially simultaneously' means that the medicant is administered within about one hour after the potassium channel agonist is last administered, preferably within about 30 minutes after, and most preferably, is administered simultaneously with the potassium channel agonist. Alternatively, 'substantially simultaneously' means that the medicant is administered within about 30 minutes before, and preferably within about 15 minutes before the potassium channel agonist is first administered." (Specification, at page 12, lines 24-29).

Thus, the specification clearly teaches the metes and bounds of "substantially simultaneously" as a defined time range extending from about 30 minutes before to about one hour after the potassium channel agonist is first administered. Therefore, Applicant respectfully requests the Examiner to withdraw the rejection of Claims 1 and 18 based on this ground and to withdraw the objections to Claims 2-9, 11-17, 19-26, and 28-34, dependent directly or indirectly from Claim 1 or Claim 18.

The Examiner's rejections of Claims 10, 27, 105 (under 35 U.S.C. § 112, second paragraph) and 110-112 (under 35 U.S.C. § 112, first paragraph) are mooted by Applicant's cancellation of those claims, without prejudice.

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CONCLUSION

In view of the above amendments and Applicant's remarks, it is submitted that this application is now ready for allowance. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney at (213) 896-6665.

Respectfully submitted,

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